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6 Attorneys for Plaintiff
SHAWN DAY
7

8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA

11 SHAWN DAY, individually and as successor in
interest to the Estate of Steffen Matthew Day,

12 Plaintiff,
13

14 vs.

15 COUNTY OF CONTRA COSTA, JOSHUA
PATZER, WARREN RUPF, and Does 1
through 50, et al.,
16

17 Defendants.

Case No. C07-4335-PJH

**DECLARATION OF HENRY MARTIN IN
OPPOSITION TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT / SUMMARY
ADJUDICATION**

Date: September 10, 2008
Time: 9:00 a.m.
Judge: Honorable Phyllis J. Hamilton
Dept: Courtroom 3, 17th Floor (SF)

18 I, HENRY MARTIN, DECLARE:

19 1. On August 14, 2006, I resided at 37 Dolphin Drive, in Pittsburg, California. The
20 south property line of my lot adjoins the north property line of 26 Galleon Way where the
21 shooting of Steffen Day occurred.

22 2. At approximately 11:00 pm on August 14, 2006, my wife Sonja and I went to
23 bed. My wife stayed awake watching television while I went to sleep. At 1:56 am my wife
24 woke me to up tell me something strange was going on outside. Almost immediately, I heard
25 two loud banging noises. At first, I believed that I had heard two shots coming from the rear
26 of my property. I looked out the window and saw two male figures in the backyard of 26
27 Galleon Way. One man was doubled over on the ground, while the second, a sheriff's deputy,
28 was standing approximately 5 to 6 feet away from the other male holding a gun in one hand

1 and a flashlight in the other. The deputy ordered the other man to lie on the ground and then
2 pushed him down. The man toppled over onto his side. The deputy appeared to be in a
3 highly agitated or panicked state of mind. I did not hear any voices prior to the shooting.

4 3. Later in the morning, about 7:00 am, I gave a statement to police about what I
5 had seen. Upon inspection of the backyard at 26 Galleon Way later in the evening with my
6 wife, we noticed that the side entry gate which normally opened outward had been forced
7 open inward and that it was broken off its hinges. We also took notice of an air-conditioning
8 wall unit protruding from the wall adjacent to the gate. Based on this inspection and our
9 review of what we both had heard at the time of the shooting, I came to believe that the
10 original banging sound that I heard was in fact the breaking of the gate and/or someone or
11 something running into the gate and the air conditioner almost simultaneously. The final loud
12 bang I believe was the gunshot.

13 4. After the above described review and inspection of the premises, I called police
14 investigators to explain my conclusions.

15 I declare under the penalty of perjury under the laws of the State of California and the
16 United States that the foregoing is true and correct and that I could competently testify in
17 person as to these facts and opinions.

18 Executed at Pittsburg, California on August 18, 2008.

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HENRY MARTIN
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PROOF OF SERVICE

RE: Shawn Day, et al. v. County of Contra Costa, et al.
United States District Court Case No. C07-4335-PJH

I am a citizen of the United States and am employed in the County of Contra Costa, State of California. I am over eighteen (18) years of age and not a party to the above-entitled action. My business address is 2121 North California Blvd., Suite 1020, Walnut Creek, CA 94596. On the date below, I served the following documents in the manner indicated on the below-named parties and/or counsel of record:

DECLARATION OF HENRY MARTIN IN OPPOSITION TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT / SUMMARY ADJUDICATION

- ☐ U.S. MAIL, with First Class postage prepaid and deposited in sealed envelopes at Walnut Creek, California.
- ☐ ELECTRONICALLY, I caused said documents to be transmitted using ECF as specified by General Order No. 45 to the following parties.
- ☐ FACSIMILE TRANSMISSION from (925) 947-1131 during normal business hours, complete and without error on the date indicated below, as evidenced by the report issued by the transmitting facsimile machine.
- ☒ Hand-Delivery Via Courier
Other: OVERNIGHT DELIVERY. On the date indicated below, I placed a true and correct copy of the aforementioned document(s) in a sealed envelope and/or package designated by **Federal Express Priority Overnight**, individually addressed to the parties indicated below, with fees fully prepaid, and caused each such envelope and/or package to be deposited for pick-up on the same day by an authorized representative of **Federal Express** at Walnut Creek, California, in the ordinary course of business.

For Defendants

James V. Fitzgerald, III
McNamara, Dodge, Ney, Beatty, Slattery & Pfalzer LLP
1211 Newell Avenue
Walnut Creek, CA 94596
Tel: (925) 939-5330
Fax: (925) 939-0203

I declare under penalty of perjury under the laws of the State of California, and the United States of America, that the foregoing is true and correct and that I am readily familiar with this firm's practice for collection and processing of documents for mailing with the U.S. Postal Service.

Dated: August 20, 2008


SHANNON M. BOWERS